

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: Johannes Hubertus Antonius Brekelmans Group Art Unit: 2618

Application No.: 10/517,921

Examiner: Chen, Junpeng

Filed: December 14, 2004

Confirmation No.: 8884

For: RECEIVER AND TUNER WITH ELECTRONICALLY  
TUNED FILTER

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37(a)

This is an appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner dated March 9, 2009, which finally rejected claims 12-30 in the above-identified application. The Office date of receipt of Appellant's Notice of Appeal was June 9, 2009. This Appeal Brief is hereby submitted pursuant to 37 C.F.R. § 41.37(a).

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### **I. REAL PARTY IN INTEREST**

The real party in interest is the assignee of the full interest in the invention, NXP B.V., of Eindhoven, Netherlands.

### **II. RELATED APPEALS AND INTERFERENCES**

To the best of Appellant's knowledge, there are no appeals or interferences related to the present appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision in the instant appeal.

### **III. STATUS OF CLAIMS**

Claims 1-11 are canceled.

No claims are withdrawn.

No claims are objected to.

Claims 12-30 stand rejected as follows:

Claims 12, 13, and 15-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Badger (U.S. Pat. No. 5,678,211, hereinafter Badger) in view of Alpaiwalia et al. (U.S. Pat. Pub. No. 2004/0051815, hereinafter Alpaiwalia).

Claims 14 and 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Badger in view of Alpaiwalia and in further view of Potrebic et al. (U.S. Pat. No. 6,804,824, hereinafter Potrebic).

Claims 14 and 27-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Badger in view of Alpaiwalia and in further view of Englmeier et al. (U.S. Pat. No. 7,119,834, hereinafter Englmeier).

Claims 12-30 are the subject of this appeal. A copy of claims 12-30 is set forth in the Claims Appendix.

### **IV. STATUS OF AMENDMENTS**

A proposed amendment was submitted subsequent to the Final Office Action mailed March 9, 2009. The proposed amendment was submitted to place the claims in better condition for appeal by clarifying the references to the individualized calibration

signal and the identifier. The Advisory Action mailed May 27, 2009, indicates that the proposed amendments will be entered.

Since the proposed amendments will be entered by the Examiner, and the Advisory Action does not repeat the rejections of claims 13 and 23-30 under 35 U.S.C. § 112, second paragraph, it appears that these rejections have been withdrawn. Accordingly, the remarks herein do not address the previous rejections of claim 13 and 23-30 under 35 U.S.C. § 112, second paragraph, because those rejections have been withdrawn.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

This section of this Appeal Brief is set forth to comply with the requirements of 37 C.F.R. § 41.37(c)(1)(v) and is not intended to limit the scope of the claims in any way. Examples of implementations of the limitations of independent claims 12, 17, 21, and 22 are described below.

The language of claim 12 relates to a receiver with a pre-calibrated tuner arranged therein. Specification, page 2, lines 13-18. The tuner is individually pre-calibrated prior to arrangement in the receiver and has at least one electronically tuned filter. Specification, page 4, lines 8-17. The receiver includes means for calibrating the electronically tuned filter by retrieving an individualized calibration signal generated by the pre-calibration of the tuner prior to arrangement in the receiver. Specification, page 4, lines 18-22. One example of the calibration means includes a processor. Specification, page 4, line 23, through page 5, line 15. The receiver is specifically identified by at least one identifier associated with at least one database field in a database outside the receiver. Specification, page 4, lines 18-22. The database stores at least the individualized calibration signal for calibrating the electronically tuned filter within the receiver. Specification, page 4, lines 18-22.

The language of claim 17 relates to a tuner with at least one pre-calibrated electronically tuned filter for use in a receiver. Specification, page 4, lines 8-17. The tuner includes calibration means for retrieving an individualized calibration signal generated during the individualized pre-calibration of the electronically tuned filter directly after manufacture of the tuner by at least one identifier for specifically

identifying at least one database field in a database situated outside the receiver for storing the individualized calibration signal for calibrating the electronically tuned filter upon arrangement in the receiver. Specification, page 4, lines 11-31. One example of the calibration means includes a processor. Specification, page 4, line 23, through page 5, line 15.

The language of claim 21 relates to a method for electronically tuning at least one individually pre-calibrated electronically tuned filter in a tuner in a receiver. Specification, page 4, lines 18-21. The method includes generating an individualized calibration signal by pre-calibrating the electronically tuned filter prior to arrangement in the receiver, and associating the individualized calibration signal with a specific identifier of at least one database field in a database situated outside the receiver, and downloading the individualized calibration signal from the database for calibrating the electronically tuned filter within the receiver according to the individualized pre-calibration. Specification, page 4, lines 8-23.

The language of claim 22 relates to a method of selling tuners. The method includes providing tuners that include at least one individually pre-calibrated electronically tunable filter. Specification, page 3, lines 26-28. The method also includes providing at least one identifier for retrieving an individualized calibration signal. Specification, page 4, lines 18-22. The calibration signal is generated during the individualized pre-calibration of the electronically tunable filter from at least one database field in a database situated outside the tuner. Specification, page 4, lines 24-31.

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

- A. Whether claims 12, 13, and 15-22 are patentable over the combination of Badger and Alpaiwalia under 35 U.S.C. § 103(a).
- B. Whether claims 14 and 23-26 are patentable over the combination of Badger, Alpaiwalia, and Potrebic under 35 U.S.C. § 103(a).
- C. Whether claims 14 and 27-30 are patentable over the combination of Badger, Alpaiwalia, and Englmeier under 35 U.S.C. § 103(a).

## VII. ARGUMENT

For the purposes of this appeal, claims 12, 13, and 15-22 are argued together as a group for purposes of the question of patentability over the combination of Badger and Alpaiwalia under 35 U.S.C. § 103(a). Claims 14 and 23-26 are argued together as a separate group for purposes of the question of patentability over the combination of Badger, Alpaiwalia, and Potrebic under 35 U.S.C. § 103(a). Claims 14 and 27-30 are argued together as a separate group for purposes of the question of patentability over the combination of Badger, Alpaiwalia, and Englmeier under 35 U.S.C. § 103(a).

- A. Claims 12, 13, and 15-22 are patentable over the combination of Badger and Alpaiwalia because the combination of cited references does not teach all of the limitations of the claims.

Appellant respectfully submits that claim 12 is patentable over the combination of Badger and Alpaiwalia because the combination of cited references does not teach all of the limitations of the claim. Claim 12 recites:

A receiver comprising a pre-calibrated tuner arranged therein, said tuner being individually pre-calibrated prior to arrangement in said receiver and having at least one electronically tuned filter, wherein said receiver includes means for calibrating said electronically tuned filter by retrieving an individualized calibration signal generated by the pre-calibration of said tuner prior to arrangement in said receiver and specifically identified by at least one identifier associated with at least one database field in a database outside said receiver storing at least said individualized calibration signal for calibrating said electronically tuned filter within said receiver.  
(Emphasis added.)

While the details of the specification are not read into the limitations of the claim, it may be useful to refer to the specification of the present application for a contextual understanding of the limitations recited in the claims. The specification of the present application describes three types of memory storage. The first memory storage is the tuner memory, shown as TUN MEM 26 in the drawing. The second memory storage is the receiver memory, shown as MEM 11 in the drawing. The third type of memory storage is the external database 40. If the receiver processor 10 decides that a tuner needs

to be calibrated, the processor reads the tuner memory 26 which provides either a Uniform Resource Locator (URL) or an Internet Protocol (IP) address (i.e., identifier) for identifying database fields in the database 40, which is located outside the receiver. Present Application, page 4, lines 32-34, and page 5, lines 1-3. Once the receiver processor 10 makes a connection with the outside database 40, via the network 41, the calibration signals are automatically downloaded from the database 40 via the network 41 and stored in the receiver memory 11. Present Application, page 5, lines 4-9. It should be noted that the tuner memory 26 and the receiver memory 11 are located within the receiver. The database 40 is external to the receiver.

In the response to Appellant's previous arguments that the look-up table of Alpaiwalia is not located outside of the receiver, the Examiner states that the look-up-table (LUT/Prom) of Alpaiwalia corresponds to the memory 11 of the present application, and the centralized system of Alpaiwalia is being read as the database outside the receiver. Office Action, 3/9/09, page 2. The Examiner repeats this assertion in the Advisory Action, which states:

As pointed out in the previous Office Action, the LUT/Prom/EEPROM is corresponding to the memory 11 in Figure 1 of the current application, and the centralized system disclosed by Alpaiwalia corresponds to the claimed database outside the receiver.  
Advisory Action, 5/27/09, page 2 (emphasis added).

Thus, the Examiner recognizes that the LUT/Prom of Alpaiwalia is not a database outside of the receiver of Alpaiwalia. Nevertheless, the Examiner asserts that Alpaiwalia purportedly discloses a database outside of the receiver. In particular, the Examiner asserts that "the centralized system disclosed by Alpaiwalia" purportedly discloses a database outside of a receiver.

However, Alpaiwalia does not disclose a centralized system, despite the Examiner's references to such disclosure. In fact, a review of the disclosure of Alpaiwalia confirms that Alpaiwalia does not reference any type of centralized system which might store a database as recited in the claim. Although Alpaiwalia describes receiving television signals through a port (Alpaiwalia, paragraph 18), there is no

indication that the television signals might originate from a “centralized system.” In a similar manner, there is no indication of a centralized database that might be located outside of the receiver.

Rather, Alpaiwalia specifically states that the television receiver comprises a tuner, a microprocessor, a communications bus and a rewritable memory, e.g., an electrically erasable programmable read only memory (EEPROM). Alpaiwalia, abstract. Alpaiwalia also explicitly states that the microprocessor recalls the tuner parameters from the EEPROM. Alpaiwalia, paragraph 20; Fig. 2. Thus, Alpaiwalia clearly describes the EEPROM which stores the tuner parameters as being an internal component included in the receiver. Since the EEPROM stores the tuner parameters used by the tuner, there is apparently no need for a “centralized system” as proposed by the Examiner. Moreover, the characterization of the EEPROM as being outside of the receiver would be inconsistent with the actual description of Alpaiwalia. Therefore, Alpaiwalia does not teach a database outside of a receiver, as recited in the claim.

Additionally, it should be noted that the Examiner’s remarks concerning “Applicant’s argument is silent about the centralized system” (Advisory Action, 5/27/09, page 2) merely reflect the fact that Alpaiwalia is silent regarding a centralized system. Frankly, the Examiner’s assertions regarding “the centralized system disclosed by Alpaiwalia” were not clear, because Alpaiwalia does not reference such a centralized system. So Appellant’s previous remarks addressed the actual scope disclosure of Alpaiwalia, including the lack of disclosure of a database outside of the receiver of Alpaiwalia. The absence of remarks expressly directed to the undisclosed centralized system proposed by the Examiner simply reflect that fact that there is no disclosure by Alpaiwalia of “a centralized system.” Moreover, the failure by the Examiner to provide any specific citations to such disclosure by Alpaiwalia emphasizes the fact that Alpaiwalia does not disclose such a centralized system. Therefore, even though the Examiner asserts that Alpaiwalia purportedly discloses a centralized system, the actual disclosure of Alpaiwalia does not support the Examiner’s assertion because Alpaiwalia does not reference such a centralized system.

For the reasons presented above, the combination of Badger and Alpaiwalia does not teach all of the limitations of the claim because the combination of Badger and



Alpaiwalia does not teach a database outside of a receiver, as recited within the context of the claim. Accordingly, Appellant respectfully asserts claim 12 is patentable over the combination of Badger and Alpaiwalia because the combination of Badger and Alpaiwalia does not teach all of the limitations of the claim.

Appellant respectfully asserts independent claims 17, 21, and 22 are also patentable over the combination of Badger and Alpaiwalia at least for similar reasons to those stated above in regard to the rejection of independent claim 12. In particular, the rejections of these claims merely rely on the same reasoning provided for the rejection of claim 12. Here, although the language of these claims differs from the language of claim 12, and the scope of the claims should be interpreted independently of other claims, Appellant respectfully asserts that the remarks provided above in regard to the rejection of claim 12 also apply to the rejections of these claims.

Given that claims 13-16 and 18-30 depend from and incorporate all of the limitations of the corresponding independent claims 12, 17, 21, and 22, which are patentable over the cited reference, Appellant respectfully submits that dependent claims 13-16 and 18-30 are also patentable over the cited reference based on allowable base claims. Additionally, each of claims 13-16 and 18-30 may be allowable for further reasons. Accordingly, Appellant requests that the rejections of claims 12-30 under 35 U.S.C. § 103(a) be withdrawn.

B. Claims 14 and 23-26 are patentable over the combination of Badger, Alpaiwalia, and Potrebic because the combination of cited references does not teach all of the limitations of the claims.

Claims 14 and 23-26 depend from and incorporate all of the limitations of the corresponding independent claims 12, 17, 21, and 22. Appellant respectfully submits that dependent claims 14 and 23-26 are also patentable over the combination of cited references based on allowable base claims. Additionally, each of claims 14 and 23-26 may be allowable for further reasons. Accordingly, Appellant requests that the rejections of claims 14 and 23-26 under 35 U.S.C. 103(a) be withdrawn.

Furthermore, the rejections of claims 14 and 23-26 based on the combination of Badger, Alpaiwalia, and Potrebic are improper because the Office Action does not

establish a *prima facie* rejection for these claims. In order to establish a *prima facie* rejection of a claim under 35 U.S.C. 103, the Office Action must present a clear articulation of the reason why the claimed invention would have been obvious. MPEP 2142 (citing *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_ (2007)). The analysis must be made explicit. *Id.* Additionally, rejections based on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *Id.*

Here, the Office Action fails to explain why the limitations of these claims would have been obvious because the Examiner merely relies on conclusory statements without providing articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. Specifically, the Examiner acknowledges that “Badger, as modified by Alpaiwalia and Potrebic, does not specifically disclose the updatable data is tuner calibration data.” Office Action, 3/9/09, page 13. In an attempt to remedy this lack of disclosure, the Examiner states a generic rule based on *KSR*. Specifically, the Examiner states:

However, according to *KSR*, it is unpatentable if known work in one field of endeavor may prompt variations (*i.e. updatable data like tuner calibration data*) of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art.  
Office Action, 3/9/09, page 13.

However, the mere recitation of a rule from caselaw is insufficient to establish articulated reasoning with some rational underpinning to support a conclusion of obviousness. Rather, the statement of a rule of law does nothing to show how the limitations of the claim might be taught or known in the prior art, or even how the stated rule might be applied to the factual situation of the present application. Moreover, the stated rule refers to known work in one field of endeavor which might prompt variations in the same field or a different field based on design incentives or other market forces. However, the Office Action does not provide any analysis regarding the potentially known work in a field or fields of endeavor, the source of some prompting, or how the

recited limitations might have been predicable based on such known work and prompting. Therefore, the Office Action fails to apply the analysis required by the cited rule to the actual facts of the present application. In the absence of some articulated reasoning and analysis, the conclusion of obviousness stated in the Office Action is merely conclusory and is not properly supported by some articulated reasoning with some rational underpinning.

In further support of the rejection, the Examiner states:

Regarding Applicant's comments on claims 14 and 27-30 [it appears that the Examiner inadvertently references claims 26-30 instead of 23-26], that's relating to the KSR rulings, the examiner would like to point out that, according to KSR, it is unpatentable if known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Specifically, according to Potrebic, it is well known that tuner maybe be used to retrieve updateable data from the internet (i.e. using IP address and URL as common identifier for Internet network), and by applying this common technique to the tuner disclosed by Badger, Badger's tuner would update it's parameters from the Internet as connecting to the Internet for updating purpose is common and predicable to one of ordinary skill in the art.  
Advisory Action, 5/27/09, page 2.

While the Examiner's remarks in the Advisory Action attempt to remedy the failure to provide analysis in the Office Action, the Examiner's statements in the Advisory Action nevertheless also fail to address how "the updateable data" described in Potrebic might be tuner calibration data. Rather, Potrebic merely refers to updating data that is associated with a particular channel such as display information. Potrebic, col. 3, lines 1-4. However, such display data is not described as tuner calibration data and, therefore, the Examiner's further statements regarding the teachings of Potrebic in combination with Badger nevertheless fail to provide articulated reasoning with some rational underpinning to support a conclusion of obviousness regarding tuner calibration data. Moreover, the Examiner's further statements in the Advisory Action also fail to provide any analysis regarding the potentially known work in a field or fields of endeavor, the source of some prompting, or how the recited limitations might have been

predicable based on such known work and prompting, with specific reference to tuner calibration data.

Therefore, the Office Action fails to establish *prima facie* rejections for claims 14 and 23-26 because the Office Action does not provide any articulated reasoning supported by a rational underpinning to address the limitations which are not taught by the cited combination of references. Accordingly, Appellant respectfully submits that the rejections of claims 14 and 23-26 under 35 U.S.C. 103(a) should be withdrawn because the Office Action fails to establish *prima facie* rejections.

C. Claims 14 and 27-30 are patentable over the combination of Badger, Alpaiwalia, and Englmeier because the combination of cited references does not teach all of the limitations of the claims.

Claims 14 and 27-30 depend from and incorporate all of the limitations of the corresponding independent claims 12, 17, 21, and 22. Appellant respectfully submits that dependent claims 14 and 27-30 are also patentable over the combination of cited references based on allowable base claims. Additionally, each of claims 14 and 27-30 may be allowable for further reasons. Accordingly, Appellant requests that the rejections of claims 14 and 27-30 under 35 U.S.C. 103(a) be withdrawn.

### **VIII. CONCLUSION**

For the reasons stated above, claims 12-30 are patentable over the cited references. Thus, the rejections of claims 12-30 should be withdrawn. Appellant respectfully requests that the Board reverse the rejections of claims 12-30 under 35 U.S.C. § 103(a) and, since there are no remaining grounds of rejection to be overcome, direct the Examiner to enter a Notice of Allowance for claims 12-30.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

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## **IX. CLAIMS APPENDIX**

1-11. (canceled)

12. A receiver comprising a pre-calibrated tuner arranged therein, said tuner being individually pre-calibrated prior to arrangement in said receiver and having at least one electronically tuned filter, wherein said receiver includes means for calibrating said electronically tuned filter by retrieving an individualized calibration signal generated by the pre-calibration of said tuner prior to arrangement in said receiver and specifically identified by at least one identifier associated with at least one database field in a database outside said receiver storing at least said individualized calibration signal for calibrating said electronically tuned filter within said receiver.

13. The receiver according to claim 12 further comprising a receiver memory located outside said tuner for storing said at least one database field having said individualized calibration signal, said tuner comprising a tuner bus coupled to said receiver memory for receiving said individualized calibration signal.

14. The receiver according to claim 13, wherein said database is coupled to a network, with said receiver being coupled to said network.

15. The receiver according to claim 13, wherein said individualized calibration signal stored in said database and/or in said receiver memory comprises a digital calibration signal, with said receiver comprising a digital-to-analog converter for converting the digital calibration signal into an analog calibration signal.

16. The receiver according to claim 15, wherein said tuner comprises said digital-to-analog converter located between said tuner bus and said electronically tuned filter.

17. A tuner comprising at least one pre-calibrated electronically tuned filter for use in a receiver comprising said tuner, wherein said tuner comprises calibration means for

retrieving an individualized calibration signal generated during the individualized pre-calibration of said electronically tuned filter directly after manufacture of said tuner by at least one identifier for specifically identifying at least one database field in a database situated outside said receiver for storing said individualized calibration signal for calibrating said electronically tuned filter upon arrangement in said receiver.

18. The tuner according to claim 17 further comprising a tuner bus for coupling to a receiver memory for receiving said individualized calibration signal stored in said receiver memory.

19. The tuner according to claim 18, wherein said individualized calibration signal stored in said database and/or in said receiver memory comprises a digital calibration signal, and wherein said receiver further comprises a digital-to-analog converter for converting the digital calibration signal into an analog calibration signal.

20. The tuner according to claim 19, wherein said tuner comprises said digital-to-analog converter located between said tuner bus and said electronically tuned filter.

21. A method for electronically tuning at least one individually pre-calibrated electronically tuned filter in a tuner in a receiver, wherein said method comprises the steps of generating an individualized calibration signal by pre-calibrating said electronically tuned filter prior to arrangement in said receiver, and associating said individualized calibration signal with a specific identifier of at least one database field in a database situated outside said receiver, and downloading the individualized calibration signal from said database for calibrating said electronically tuned filter within said receiver according to the individualized pre-calibration.

22. A method of selling tuners, the method comprising:  
providing tuners that comprise at least one individually pre-calibrated electronically tunable filter and at least one identifier for retrieving an individualized calibration signal generated during the individualized pre-calibration of said

electronically tunable filter from at least one database field in a database situated outside said tuner; and

operating the database that comprises the database fields for storing said individualized calibration signal for calibrating the electronically tunable filter upon arranging the electronically tunable filter within a receiver according to the individualized pre-calibration.

23. The receiver according to claim 12, wherein said tuner includes a memory to store the at least one identifier, the at least one identifier comprising a Uniform Resource Locator (URL) that identifies a location of the individualized calibration signal via an input/output of the receiver.

24. The receiver according to claim 17, wherein said tuner includes a memory to store the at least one identifier, the at least one identifier comprising an Internet Protocol Address that identifies a location of the individualized calibration signal for retrieval via an input/output of the receiver.

25. The method according to claim 21, further comprising the tuner providing the at least one identifier, the at least one identifier comprising a Uniform Resource Locator (URL) that identifies a location of the individualized calibration signal for retrieval via an input/output of the receiver.

26. The method according to claim 22, further comprising the tuner providing the at least one identifier, the at least one identifier comprising a Uniform Resource Locator (URL) that identifies a location of the individualized calibration signal for retrieval via an input/output of the receiver.

27. The receiver according to claim 12, wherein the tuner comprises more than one electronically tuned filter, and wherein said more than one electronically tuned filter shares the at least one identifier, with the individualized calibration signal comprising a



number of parts with indications regarding which parts are specifically associated with individual electronically tuned filters.

28. The receiver according to claim 17, wherein the tuner comprises more than one electronically tuned filter, and wherein said more than one electronically tuned filter shares the at least one identifier, with the individualized calibration signal comprising a number of parts with indications regarding which parts are specifically associated with individual electronically tuned filters.

29. The method according to claim 21, wherein the individualized calibration signal comprises a number of parts with indications regarding which parts are specifically associated with respective individual electronically tuned filters, and wherein the at least one identifier is shared by more than one of the individual electronically tuned filters.

30. The method according to claim 22, wherein the individualized calibration signal comprises a number of parts with indications regarding which parts are specifically associated with respective individual electronically tuned filters, and wherein the at least one identifier is shared by more than one of the individual electronically tuned filters.

## **X. EVIDENCE APPENDIX**

There is no evidence submitted with this Appeal Brief.

## **XI. RELATED PROCEEDINGS APPENDIX**

To the best of Appellant's knowledge, there are no appeals or interferences related to the present appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision in the instant appeal.